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UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Minneapolis, MN 55402-0903

#25

In re Application of: :
JONSSON, Soren :
U.S. Application No.: 08/968,034 : DECISION
Filing Date: 12 November 1997 :
Attorney's Docket No.: C-35890 :
For: METHOD AND DEVICE FOR FEEDING :
COMPONENTS FOR BONE CEMENT :
INTO A MIXING VESSEL FOR THESE :

This decision is issued in response to applicant's "Petition To Treat November 13 1995 Application Filing As A Filing Under 35 U.S.C. 111(a)" filed 01 October 2002.

BACKGROUND

The present application is a Continuation-In-Part ("CIP") of U.S. application 08/734,817, which was a CIP of U.S. application 08/545,591 ('591). The '591 application is a national stage of international application PCT/SE94/00415, processed under 35 U.S.C. 371.

On 29 January 1996, the DO/EO/US mailed a Notification Of Acceptance (Form PCT/DO/EO/903) clearly indicating that the '591 application had been treated as a filing under 35 U.S.C. 371.

On 21 March 1997, the USPTO mailed an Office Action in the '591 application which specifically stated that the substitute specification filed with the '591 national stage application was **not** entered because of the presence of new matter.

On 01 October 2002, applicant filed the petition considered herein. The petition seeks to have the '591 application treated as a filing under 35 U.S.C. 111(a), rather than 35 U.S.C. 371, and requests that the substitute specification filed on 13 November 1995 be considered as part of the original application papers and accorded a 13 November 1995 filing date.

DISCUSSION

37 CFR 1.181(f) states the following with respect to petitions to the Commissioner:

Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be

dismissed as untimely, except as otherwise provided. This two month period is not extendable

Here, applicants were on notice at least from the mailing of the Form PCT/DO/EO/903 on 29 January 1996 that the '591 application had been processed as an application under 35 U.S.C. 371, and the Office Action mailed 21 March 1997 expressly stated that the substitute specification would not be entered because of new matter.

The present petition was not filed until nearly six years after the mailing of the Office Action from which relief is requested. Based on the nearly six year delay, the present petition is considered untimely.

Applicants are also advised that treatment of the '591 application as a filing under 35 U.S.C. 111(a) would not entitle applicants to obtain benefit/priority in the present application to PCT/SE94/00415 and the Swedish priority application claimed therein, as the requirements under 35 U.S.C. 119(a)-(d) and 120, 37 CFR 1.55, and 37 CFR 1.78 have not been complied with.

CONCLUSION

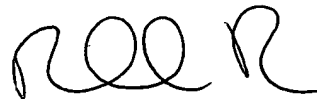
Applicant's petition is **DISMISSED** without prejudice.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.



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